IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1366 OF 2006

Shivaji Krishna Aswar .... Petitioner

versus

Gram Vikas Mandal & ors. ..... Respondent.

Mr. M.L. Patil for the petitioner
Mr. Chandrakant Bidkar for Respondent no.2
Mr. A.P. Vanarse AGP for respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 19TH JANUARY, 2007

P.C.;

1. The respondent no.1 society administers three secondary schools which are recognised and eligible for grants. There are three posts of Head Master available in the said three schools, one each in the said three schools. Rule 9(10)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules (for short MEPS Rules) lays down the percentage of reservation to be filled in and reservation in favour of the backward class category is to the extent of 24 percent. The petitioner belongs to Scheduled caste category of the backward class. The Respondent no.2 came to be promoted as Headmaster who was then working as Assistant Headmaster. Aggrieved by the promotion granted to the respondent no.2, petitioner filed an appeal before the School Tribunal and made a grievance for not reserving

the post for scheduled cast category and consequential supersession of his claim to the promotional post.

2. The tribunal considering the submissions made by the rival parties, held that as the rule provides for only 24% of reservation of posts, it postulates existence of atleast four posts and as there are less than four posts of Headmaster available, no reservation can be made in the promotional post. So holding that as the percentage of reservation is 24%, no reservation can be made in the promotional post. Appeal filed by the petitioner has been dismissed and aggrieved thereby this writ petition has been filed.

3. The learned counsel for the petitioner has contended that the view taken by the tribunal is erroneous and would frustrate the provision prescribing for reservation. Per contra the learned counsel for the respondent has relied upon the judgment of Full Bench of this court reported in **2006(6) M.L.J. page 882**, which goes to endorse the view taken by the tribunal to be correct. The Full Bench has accepted the view expressed by the earlier Division Bench decision of this court reported in **2005(4) M.L.J. page 946**. The Full Bench and the Division Bench have held that for implementing the reservation in the promotional post, there need to exist atleast four posts, otherwise the reservation

cannot be implemented. The point raised in this petition stands concluded against the petitioner. At this stage, the learned counsel for the petitioner submits that the view taken by the Division Bench and the Full Bench is not the correct view. The counsel makes a request that a reference be made under Rule 7 of Chapter I of Bombay High Court Appellate Side Rules for constituting a larger Bench. I am not inclined to accede to the said request, as the point is concluded by the Full Bench judgment.

4. Having regard to the totality of the facts and circumstances and the binding judgments, there is no merit in this petition and the writ petition is thus summarily dismissed.

...